IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Kailashi & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.887/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 10-7-2002 in Sessions Case No.51/2001 passed by Sh. Iduddin, RHJS, Additional Sessions Judge (Fast Track) No.1 Bharatpur.

Date of Judgment: April 25, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Raj Kamal Gaur, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. Biri Singh Sinsinwar, for complainant.

BY THE COURT:

Challenge in this appeal is to the judgment dated July 10, 2002 of learned Additional Sessions Judge (Fast Track) No.1 Bharatpur whereby the appellants Kailashi and Sukha were convicted and sentenced as under:-

U/s.366 IPC:
Both to suffer rigorous imprisonment for five years and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

U/s.376 (2)(g) IPC:
Both to suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

U/s.452 IPC:
Both to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer simple imprisonment for one and a half months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Soran (Pw.11) submitted a written report (Ex.P-8) on June 4, 1998 at Police Station Kumher with the averments that his two daughters Asha and Usha (fictitious name) were to be married on June 8, 1998. However in the preceding night Asha conspicuously disappeared. On enquiry it was revealed that around midnight 2-3 persons came to the house after scaling the wall and took his daughter with them. Out of those three persons one person was identified as Sukha by his daughter-in-law Vimlesh. It was also revealed that Asha took with her a sum of Rs.1,27,000/-, some golden ornaments and documents of Tractor. On that report a case was registered and investigation commenced. Site was inspected, statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Bharatpur. Charges under sections 366, 376 (2)(g), 330, 452 and 327 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 21 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant canvassed that there was unexplained delay in lodging the report. The prosecution witnesses in their statements in court have not stated about the age of the prosecutrix and according to Dr.Bhanwar Singh (Pw.17) the age of prosecutrix was 18-19 years and she was consenting party.

4. Having scanned the statements of the prosecution witnesses, I

find the factual situation as under:-

(a) The prosecutrix on the date of incident was of the age of 18 to 19 years.
(b) Dr. B.L.Meena (Pw.16), who examined the prosecutrix found four abrasions on the person of prosecutrix.
(c) The prosecutrix (Pw.1) in the cross examination admitted that she went with the accused after scaling the wall and she herself came to the house of Sarpanch. She did not go to her house because of fear.
(d) No specific allegation has been levelled against appellant Kailashi.

5. In my considered opinion, the prosecution is able to establish that it was appellant Sukha who committed offence with the prosecutrix. Case against appellant Kailashi could not however be proved beyond reasonable doubt.

6. Evidently appellant Sukha was 22 years of age on the date of offence and the offence appears to have been committed by him in his youthful exuberance. The prosecutrix was a major girl on the date of incident and this possibility cannot be ruled out they had developed intimacy. The Age of prosecutrix according to opinion of the Medical Board was between 18 to 19 years. These facts warrant imposition of lesser sentence.

7. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18

years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

8. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383) wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

9. For these reasons, I dispose of instant appeal in the following terms:-

(i) Appeal of appellant Kailashi is allowed and he stands acquitted of the charges under sections 366, 376(2)(g) and 452 IPC. Appellant Kailashi, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(ii) Appeal of appellant Sukha is partly allowed and instead of section 376(2)(g) he is convicted under section 376 IPC and his

sentence is reduced from 10 years rigorous imprisonment and fine of Rs.1000/- to 5 years rigorous imprisonment and fine of Rs.500/-, in default to further suffer fifteen days rigorous imprisonment. Sukha is however acquitted of the charges under sections 366 and 452 IPC.

(iii)The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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